

23 DEC 1976

Honorable James T. Lynn, Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In response to your General Counsel's letter to me of 2 November 1976, I am enclosing herewith additional material explaining in detail my opposition to provisions of the proposed Executive order entitled, "Suitability Requirements for Government Employment," which was forwarded to me for comment.

As I indicated in my letter to you of 19 October 1976, I am concerned that neither the Central Intelligence Agency nor the Intelligence Community Staff was consulted in the process of drafting this proposed Executive order. The problems inherent in the document are of such magnitude that, in my view, the Intelligence Community should be excluded from its provisions. I appreciate the understanding expressed in Mr. Nichols' letter and in light of his request for further assistance in redrafting this order, officers on my staff have carefully reviewed the draft order and have identified and explained those provisions which pose problems for the Government's National Foreign Intelligence Program, in terms of suitability requirements for Government employment and, concomitantly, the granting of access to foreign intelligence related information which it is my statutory responsibility to protect.

In light of the apparently substantial opposition to provisions of this draft order by other Executive agencies and departments, and considering the problems identified by my staff, I must stress that, upon review by your office of the material enclosed herewith, we be kept informed of future developments to ensure that the needs and responsibilities of the Intelligence Community are adequately reflected.

As I indicated in my 19 October letter, it is my view that our efforts should be directed toward developing a uniform program for suitability and security requirements related to Government employment--a single document that will form the basis for such programs throughout the Executive Branch. In order to accomplish this, however, the Executive order must establish clearly that the Director of Central

Intelligence has the statutory responsibility and authority for the protection of intelligence sources and methods; it therefore must be unambiguous in recognizing that the standards for granting access to Sensitive Compartmented Information and to intelligence sources and methods are solely the responsibility of the Director of Central Intelligence. To meet both of these objectives, the enclosure proposes the addition of certain language to Section 4 of the proposed order. Here and elsewhere, the draft Executive order must recognize that the field of intelligence is unique and demands the use of certain procedures not commonly utilized by other Government agencies and departments.

I trust this letter and the enclosed material will be of assistance to your staff as they begin the process of redrafting this proposed Executive order. I would only reiterate my concern that the views and requirements of the Intelligence Community be reflected fully in this Executive order. Absent this, my view remains that the Intelligence Community must be exempted from the terms of the Executive order, per the amendment I proposed in the enclosure to my letter to you of 19 October 1976. It is my continued hope, however, that our coordinated efforts to resolve the problems posed by the draft order will result in the development of a program which in its scope and effect will be most beneficial to the Government as a whole.

Sincerely,

SIGNED

George Bush

Enclosures

Distribution:

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OLC:RLB:hms (typed 10 December 1976)

Enclosure I

EXPLANATION OF AMENDMENTS TO THE PROPOSED EXECUTIVE
ORDER, "SUITABILITY REQUIREMENTS FOR GOVERNMENT
EMPLOYMENT," BY THE DIRECTOR OF CENTRAL INTELLIGENCE

1. SECTION 2. Several of the definitions in this Section lend themselves to misinterpretation, omit concepts important to national security considerations, and fail to adequately reflect the responsibilities and authorities of the Director of Central Intelligence under the National Security Act of 1947, as amended, the Central Intelligence Agency Act of 1949, as amended, and Executive Order 11905. In order to properly reflect these concerns and to make the definitions compatible with later provisions in this draft order, a number of amendments have been proposed, most of which are self-explanatory. Attention is directed, however, to the following:

a. The term "Agency Head" should be broadened; as defined in the draft order, the term would exclude, for example, the Director of the Defense Intelligence Agency since that office, while constituting a major component of the Intelligence Community, was not established by statute or Executive order, as would be required to qualify as an agency head under this definition.

b. The proposed omission of the last sentence of the definition of "Complaint Investigation" is deemed necessary to remove language which appeared superfluous and unclear.

c. It is strongly urged that, as proposed in Enclosure II, the definition of "Adjudication" include specifically the concept of "loyalty" in order to affirm that it is a required qualification for Federal service, particularly in those cases involving Positions of Special Trust.

d. The definition of "Federal Service" should be amended in order to make clear that contractors and their employees are not, for purposes of this Executive order, considered to be included in the Federal Service.

e. The "Full Field Investigation" as defined in this Section should be expanded to include as an element thereof the establishment and verification of an individual's identity.

f. As modified by the proposed amendment noted in Enclosure II, the definition of "Position of Special Trust" is acceptable; care should be taken, however, to avoid an interpretation of this term, such as that contained in the summary of the draft Executive order, which would include, as an element of a Position of Special Trust, the fact that the adverse impact on the national interest must be "irreparable," a standard which would be unrealistically stringent and would be extremely difficult to define.

g. The statutory cite included in the definition of "Sensitive Compartmented Information" appears to be in error, and an amendment has been proposed to correct it.

h. As with the proposed change to the definition of adjudication, the concept of "loyalty," as defined in this Section, must be included in the definition of "Suitability."

i. Changes to the definition of "Suitability Determination" have been proposed in order to establish clearly that access to Sensitive Compartmented Information, intelligence sources and methods, and intelligence information shall be governed by the authority vested in the Director of Central Intelligence and not the Civil Service Commission or any other department or agency.

2. SECTION 3. The partial exemption for components of the Intelligence Community contained in subsection (b) is ambiguous and incomplete. The proposed amendment would properly include all organizations within the Intelligence Community as defined by Executive Order 11905, and reflects the fact that pursuant to his statutory responsibilities and authorities, the Director of Central Intelligence must maintain ultimate authority for the establishment of personnel suitability investigation and adjudication programs as they relate both to the Government's foreign intelligence program and to access to foreign intelligence information and sources and methods. These proposed changes reflect the necessity that the Director of Central Intelligence not be required to accept certification of clearances which do not meet the minimum security requirements as established by the Director of Central Intelligence pursuant to his statutory responsibilities. To hold otherwise, or to establish a two-tiered system of granting clearances, would not only be inconsistent with such statutory authorities but would prove costly and contrary to the legitimate intent of this proposed order.

3. SECTION 4. The additional language proposed to be inserted at the last sentence of this Section clarifies that the Director of Central Intelligence retains, pursuant to his statutory responsibilities, the authority to prescribe standards for access to the cited categories of information.

4. SECTION 5. The proposed amendments to this Section reflect the necessity that "loyalty" is and must remain an essential element of any standard governing a Position of Special Trust in the U.S. Government.

5. SECTION 6. A number of substantive changes have been made at various points in this Section to reflect the interests and needs of the National Foreign Intelligence Program with respect to Positions of Special Trust established pursuant to this order. As a threshold issue, the limitation that Positions of Special Trust be filled only by U.S. citizens would pose severe problems for the Intelligence Community and would seriously hamper the ability of the Central Intelligence Agency to carry out its mandate.

The definition of "National Security" activities in paragraph (a) (1) lacks clarity and the proposed amendment more properly defines national security activities.

The wording of paragraph (c) (1), "Authority to Designate," in effect fails to extend to certain organizational components of the Intelligence Community the authority to designate Positions of Special Trust. The heads of all components of the Intelligence Community as defined in Executive Order 11905 should have such authority, and a proposed amendment to this subsection corrects this apparently inadvertent error (the proposed language would include, for example, the National Security Agency and the Defense Intelligence Agency, neither of which were "established by statute or Executive order"). Furthermore with respect to this paragraph, the limitation that only the heads of Executive departments or agencies would have the authority to designate, certify, or redesignate Positions of Special Trust would place an unnecessary burden on such officials; the proposed amendment would allow this authority to be delegated. The proposed amendment also would remove the requirement that every Executive organization maintain a record system concerning the certification and redesignation of Positions of Special Trust. Such a system would seem burdensome and of little practical value. Finally, the proposed amendatory language in this paragraph reflects that, as between the authorities and responsibilities of the Civil Service Commission and the Director of Central Intelligence, the latter, under his statutory authority to protect intelligence sources and methods and to maintain the confidentiality of organizational and personnel matters of the Central Intelligence Agency, is not and should not be required to make such an accounting.

Attention is drawn to the analysis and summary of this proposed Executive order prepared by the Domestic Council Committee on the Right of Privacy, in which the term "unacceptably adverse impact" as used in subsection (a) means that failure in such a position must result in "irrevocable harm." This explanation would involve the necessity of predicting in advance what action or lack thereof would have results that never could be repaired--clearly an unrealistic standard by which to measure the sensitivity of Government positions. Care should be taken that the history of this Executive order not reflect the concept that "unacceptably adverse impact" is limited to those instances where "irrevocable harm" results.

6. SECTION 7. Strong objection is taken to the standards for conducting suitability investigations outlined in this Section. The standards as proposed in this draft order fail to reflect the minimum standards necessary to enable the Director of Central Intelligence to properly carry out his statutory responsibilities to protect intelligence sources and methods from unauthorized disclosure, a mandate which necessarily implies a responsibility to ensure that only those individuals of the highest character and loyalty be granted access to the Government's foreign intelligence information. Substantive changes as to the basis, scope, and particular investigative considerations, as outlined in this Section, are proposed in Enclosure II.

Paragraph (d) (1) must include, at the outset, authority for the Government to investigate, in addition to those factors outlined in the proposed order, an individual's identity and loyalty before any individual is allowed to occupy a Position of Special Trust. In addition, the time parameters for conducting suitability investigations for Positions of Special Trust must be extended beyond the five-year period proposed in this draft Executive order. Under a five-year investigative period, for example, a foreign agent attempting to penetrate a sensitive area of the U. S. Government would be required to establish an identity and sit tight only for a five-year period before attempting to secure the position he desires. Evidence indicates there has been no decrease in efforts by hostile intelligence services to penetrate our Government's foreign intelligence program. These inadequate standards for suitability investigations would make the detection of such agents far more difficult than at present.

The Central Intelligence Agency and the Intelligence Community Staff, therefore, propose that the minimum requirements for suitability investigations for Positions of Special Trust remain identical with those contained in Director of Central Intelligence Directive No. 1/14. It is

these standards that are proposed as an amendment to subparagraphs (i) - (ix) of paragraph 7 (d) (1). Additional changes are made to paragraph (d) (2) in order to remove certain impractical limitations on the use of a so-called "emergency" Position of Special Trust.

Subsection (e) is amended to reflect the special considerations and needs of the Intelligence Community which must be taken into account in determining the procedural requirements to be followed in allowing the subject of a suitability investigation to be made aware of the activities being conducted by the investigating department or agency. The responsibilities of the Director of Central Intelligence to protect intelligence sources and methods and to retain the confidentiality of Central Intelligence Agency personnel and organizational matters are reflected in the proposed amendment.

Paragraph (f) (1), "Sources of Investigative Information," is expanded to include specifically information related to birth and citizenship records of individuals who are the subject of suitability investigations. Such information may be of critical importance in assessing the suitability and trustworthiness of an individual being considered for a position involving access to sensitive foreign intelligence information.

Paragraph (f) (2) must be amended as proposed in Enclosure II to afford the Intelligence Community the flexibility to conduct investigations while protecting, as necessary and as required by statute, the identity and role of the Central Intelligence Agency in conducting suitability investigations. The notification procedures and elements as enumerated in paragraph (f) (2) could be construed to conflict with the above-mentioned responsibilities of the Director of Central Intelligence to protect certain information, as well as his authority to terminate any officer or employee of the Central Intelligence Agency "whenever he shall deem such termination necessary or advisable in the interests of the United States" (Section 102[c] of the National Security Act of 1947, as amended).

Additional changes proposed to paragraph (f) (4) are necessary to reflect the investigative responsibilities and needs of the Central Intelligence Agency, as contained in Executive Order 11905 and including the need to conduct, where necessary, covert inquiries. The use of a polygraph in conducting background investigations is a legitimate and properly recognized tool which must remain available to the Intelligence Community if effective and adequate investigations are to be conducted and intelligence sources and methods are to be fully protected against compromise.

The provisions at page 21 of the draft Executive order, paragraph (j) (1), have been amended to ensure a uniform base-level reinvestigation program for Positions of Special Trust. The new language would operate to upgrade investigative criteria to a level acceptable for positions and matters involving foreign intelligence information.

7. SECTION 8. The addition of the term "deviate" to subparagraph (b) (1) (ii) reflects a legitimate concern of the Intelligence Community that certain behavior, which may not properly be categorized as "criminal, dishonest, infamous or notoriously disgraceful," nonetheless comprises a legitimate factor which should be considered as one basis for disqualification. At page 23 of the proposed order, subparagraph (b) (2) (i), the term "relationships" has been added to include, as a proper subject for investigations involving Positions of Special Trust, associations with foreign intelligence personnel, suspect individuals or groups. Such relationships have been and will continue to be circumstances utilized by opposition forces to gain leverage or control over particular individuals.

The additional term "demonstrably" at page 25, subparagraph (c) (2) (vi), would require that prior to consideration of social or environmental conditions in an adjudication procedure, they must be shown to actually have had an effect on the conduct in question. Deletion of the last clause of subparagraph (c) (2) (viii) eliminates an apparent redundant provision of the proposed order.

As drafted, subparagraph (c) (3) (ii) at page 26 of the proposed order does not go far enough in allowing or requiring that the Government, in investigating an individual employee as described in this therein, look behind the mere fact that such employee has recognized a potentially adverse situation and has come forward to the "appropriate authority." Particularly in those situations in which an individual employee in a Position of Special Trust has access to foreign intelligence information, the voluntariness and candor with which that employee comes forward cannot be considered as mitigating circumstances unless the motivation for such conduct is known. Voluntariness and candor at most should be considered as evidence of possible rehabilitation.

The additional language inserted at subsection (e), page 27, reflects once again the legitimate need, in certain circumstances, to maintain adequate cover considerations during and after investigations related to the National Foreign Intelligence Program.

8. SECTION 9. The additional language proposed for subsection (a), reaffirms the existing statutory authority of the Director of Central Intelligence to terminate employees whenever such action is deemed necessary in the interests of the United States (Section 102[c] of the National Security Act of 1947, as amended). In the context of this proposed Executive order, and particularly regarding this Section which purports to set forth due process requirements for certain Federal employees and applicants, the authorities and responsibilities of the Director of Central Intelligence must be specifically referenced. This is necessary to make clear the meaning and extent of the standards in the proposed Executive order, and so as not to mislead persons who might in the future turn to this proposed Executive order, if enacted, for recourse in a judicial or administrative proceeding.

The alterations to paragraph (b) (1) are necessary so as not to prejudice or preclude the use of legitimate investigative procedures involving cover considerations by agencies and departments dealing with foreign intelligence information.

The various changes at pages 28 through 31 are necessary so as to bring the proposed procedures into line with the existing authorities and responsibilities of the Director of Central Intelligence, and in order to reflect the fact that the Central Intelligence Agency and certain other components of the Intelligence Community are in the excepted service and not the competitive service. The procedures outlined in this Section must reflect existing differences and criteria applicable to the competitive and the excepted services.

9. SECTION 10. It is necessary to insert the proposed language to paragraph (d) at page 32 of the draft order so as to include thereunder the protection of intelligence sources and methods.

10. SECTION 13. The proposed additional language to subparagraph (i) at page 34 of the draft order reflects the fact that inclusion of the Central Intelligence Agency in an index such as proposed therein would conflict with Section 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C.A. 403g). The deletion of portions of the proposed Executive order at pages 36 and 37 is necessary, as such provisions would be neither practical nor workable if applied to the Intelligence Community and to foreign intelligence information. Subparagraph (iv), related to the disposal of investigative reports, should not properly be a part of an Executive order, but rather is should be governed by GSA/NARS.

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PROPOSED EXECUTIVE ORDER NO. , "SUITABILITY REQUIREMENTSFOR GOVERNMENT EMPLOYMENT," WITH AMENDMENTSTHERETO PROPOSED BY THE DIRECTOR OF CENTRAL INTELLIGENCE *

WHEREAS the national interests require that all persons privileged to be employed in the Federal Government shall be reliable, of good conduct and character, and of undivided allegiance and unswerving loyalty to the United States; and

WHEREAS the national security and welfare require that only persons who have demonstrated integrity, trustworthiness and discretion of the highest order shall be employed in positions of special trust and that the selection of such employees shall be made on the basis of a comprehensive review of their suitability and qualifications to hold such positions; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the Federal Government be adjudged by standards and procedures that are consistent, uniform and comport with the individual's right of privacy:

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States including section 1753 of the Revised Statutes of the United States (5 U.S.C. 1970 ed. 3301 and 3701); the Civil Service Act of 1883 (5 U.S.C. 1970 ed. 1101 et seq.); section 9A of the Act of August 2, 1939 (5 U.S.C. 1970 ed. 333 and 7311); the Act

* Language to be added is underscored; deletions are stricken out.

Section 1. Revocation of E. O. 10450. Executive Order No. 10450 of
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April 27, 1953, as amended, is hereby revoked.

Section 2. Definitions. For the purpose of this Order, unless otherwise indicated, the following terms shall have these meanings:

Adjudication: The procedure by which a qualified ^{person} ~~person~~ weighs the known facts of an individual's conduct, ^{loyalty} ~~and~~ character and considers all relevant circumstances of that conduct, prior experience in similar cases, and the general nature of the position sought or held, in order to evaluate the probability the individual will perform the duties of the position responsibly and in a manner consistent with the national interest.
~~and efficiently and to balance that degree of probability against the acceptability of failure.~~

Adverse Determination: A decision at any level of the adjudication procedure or in subsequent hearings based upon disqualification factors set forth in Section 8 (b) of this Order, which resolves a doubt against the individual with the result that he or she is denied the right to take an examination for employment, is denied appointment, is suspended from employment either with or without pay, is separated from employment, is disqualified for a Position of Special Trust, or is denied access to classified information.

Agency Head: The principal officer or administrator of a department, agency or other major organization or component of the Executive Branch.
~~established by statute or Executive Order.~~

Allegiance: The devotion or emotional commitment of an individual to a political entity, ~~as customarily found in a citizen or person intending to become a citizen of such entity.~~

Civilian Employee: All appointive positions in the Executive Branch of the Government of the United States, except positions in the uniformed services (armed forces ~~commissioned~~ ^{Approved For Release 2004/10/27 : CIA-RDP78M02660R000800020002-7} and commissioned corps of the Environmental Protection Services Administration).

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Complaint Investigation: An inquiry initiated as a result of an allegation or ~~other~~/reasonable suspicion that an employee has committed some violation of law or regulation or otherwise by his or her conduct has raised a question as to whether he or she continues to meet the standards of employment for the particular position held. Such an inquiry may be conducted under the authority of any applicable law or regulation or of this Order or both.

~~While a complaint investigation is not a routine inquiry, the investigative procedures prescribed by this Order will be observed to the extent compatible with the integrity of the investigation, whenever its objectives include determining the individual's suitability for continued employment.~~

Emergency Waiver: An emergency waiver is a suspension of the investigative requirements of this Order that allows the head of a department or agency to fill a Position of Special Trust in his department or agency for up to 90 days without completion of the prescribed investigative report.

Federal Service: Federal service means employment by any Executive Branch agency including any Executive department, agency or independent establishment of the United States or any corporation wholly owned by the United States, and including the United States Postal Service and the Postal Rate Commission. Federal service ~~It~~/includes the terms Federal employment, government employment and any and all other terms used to describe employment status within the Executive Branch of the Federal government/ but does not include contractors and their employees.

Foreign Affairs: The policies, duties and functions pertaining or giving effect to the relations between the United States and Foreign governments, groups or individuals, and international organizations.

Full Field Investigation: An investigation ~~of~~ to establish and verify identify and to deve- an individual's background/ lop information, /conducted in person by qualified investigators, and including interviews with knowledgeable persons and checks of appropriate records, including

those of appropriate national agencies to cover a sufficient period of the person's life in order to assure ~~acquisition of information necessary~~ and ~~to determine~~ the individual's suitability for the position sought or held.

General Standard Positions: All positions in the Federal Service which have not been designated Positions of Special Trust.

Investigation: An inquiry conducted by an authorized investigative organization for the purpose of determining an individual's suitability for employment in the Federal service as provided for in this Order.

Investigative File: The official repository of all relevant investigative material, reports or similar information.

Investigative Record: Any item, collection, or grouping of information authorized for inclusion in a file, indices, list, register or computer system which relates to an investigation which contains the name, or the identifying number, symbol or other identifying particular assigned to the individual upon whom the investigation was conducted and which describes the nature of the investigation, the date of the investigation and the investigatory agency.

Loyalty: An individual's faithful and true allegiance to the U. S. and its constitutional form of government.

National Agency Check: A record check of the Federal Bureau of Investigation's fingerprint and investigative files, the CSC security-investigations index and ~~where~~ ^{other} appropriate records of Federal agencies including Defense Central Investigative, Central Intelligence and State Department indices ~~and other agencies as appropriate.~~

National Interest: All of the ~~various~~ interests of the Federal government viewed collectively. The interests of national security and national welfare are specific categories of the national interest.

Personnel File: The record required to be maintained by law or regulation reflecting the employment of an individual in the Executive Branch of the government. The Official Personnel Folder is the official repository of records and reports of personnel actions effected during an employee's Federal service and the documents and papers required in connection with these actions.

Position of Special Trust: ^P~~Certain~~ positions within the Federal service which entail duties of such a ~~sensitive~~ nature that the misconduct, malfeasance or nonfeasance of an incumbent in any such position could reasonably be expected to result in an unacceptably adverse impact upon the national interest.

Security Determination: A determination, as required by Executive Order 11652, made by a lawfully designated authority of the Federal government, on the basis of prescribed investigation and other relevant available information, as to an individual's trustworthiness for access to classified information or material.

Sensitive Compartmented Information: All information and materials bearing special controls of the Intelligence Community (as defined in Executive Order 11905) indicating restricted handling/^{or access} within present and future intelligence collection programs and their end products for which community systems of compartmentation have been or will be formally established. The term does not include Restricted Data as defined in ^{42 U.S.C. 2014(y).} ~~Section 1A, Public Law 93,~~

~~Atomic Energy Act of 1954, as amended.~~

Significant Adverse Information: Such information, directly relating to the factors to be considered in making a suitability determination set forth in subsection 8(b) of this Order, which could reasonably be expected of itself to adversely influence a determination as to suitability or prompt the seeking of additional investigation or clarification.

in terms of character and integrity as distinguished from professional skills
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or qualifications, for the position sought or held, taking into consideration
all relevant aspects of the position including its level of responsibility and
sensitivity from the point of view of the national interests.

Suitability Determination: A determination made by the Civil Service Commission or the head of a department or agency of the Executive Branch or his designee, on the basis of investigation prescribed by this Order and other relevant available information, as to an individual's suitability for employment in the Federal service with respect to the appropriate suitability standard

The DCI shall be free, with respect to set forth in Section 5 of this Order. / ~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE~~ / any position requiring access to or clearances for access to Sensitive Compartmented ~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE~~ / Information, sources and methods and classified intelligence information, to ~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE~~ / require a separate security determination, notwithstanding the fact that a ~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE~~ / suitability determination has been effected with respect to the designation of ~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE~~ / a Position of Special Trust as described in Section 6(b)(ii) through (vi) of ~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE~~ / this order.

Suitability Factors: Such factors relevant to a determination as to an individual's suitability for employment in the Federal Service, under the standards required by Section 5(a) and (b), which are detailed in Subsections 8(b)(1) and (2) of this Order.

Suitability Standard: The minimum level of personal fitness and competence, prescribed by this Order, which each civilian officer or employee must meet, according to the nature of the position concerned, to be determined suitable for employment in the Federal service.

Section 3. General.

(a) Purpose of the Order - The purpose of this Order is to establish uniform standards for determining the suitability of individuals for employment in the Federal Service and for determining the eligibility of individuals

11652, to delineate authority and responsibilities of

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and agencies in application of the standards, to limit the collection of personal information required in determining suitability for Government employment to that which is relevant and necessary to such determination and which is consistent with the individual's basic right of privacy, and to establish effective oversight to assure that implementation of the policies set forth herein by the departments and agencies is consistent with the interests of the nation and the constitutional and civil rights of the individuals concerned.

(b) Establishment of the Federal Civilian Personnel Suitability

Investigation and Adjudication Program - There shall be established a uniform Federal Civilian Personnel Suitability Investigation and Adjudication Program operating under the overall personnel policies and procedures

Any Intelligence Community organization, developed by the Civil Service Commission. ~~Such programs in the Central Intelligence Agency, National Security Agency, and the Federal Bureau of Investigation, based on procedures or requirements established by or pursuant to statute or other Executive Order, shall be excluded from those Civil Service Commission regulations and procedures or other Executive Order, shall be excluded from those Civil Service and those provisions of this Order which, as determined by the Director of Commission regulations and procedures and those provisions of this Order Central Intelligence, are incompatible with such statutes, Executive orders or the which conflict with such statutes or Executive Orders.~~ procedures established pursuant thereto.

Section 4. Applicability.

Pursuant to the authority of the Act of August 26, 1950, the provisions of that Act are hereby extended to all other departments and agencies of the Federal Service to the extent that the heads of such departments and agencies shall designate Positions of Special Trust in accord with the criteria of Section 6(b)(1) of this Order. By virtue of the authority of the Constitution and the other statutes cited in the preamble to this Order, standards and criteria for other Positions of Special Trust and for Federal employment generally are hereby established. The provisions

These standards shall apply, as appropriate, to all civilian positions in the Executive Branch, whether of the competitive or excepted services.

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The standards and criteria specified in this Order shall be used in making the determination of trustworthiness required of certain civilian personnel pursuant to Section 6A of Executive Order 11652. A determination that an individual has met the applicable standard of Section 5 of this Order shall be deemed to include a determination of trustworthiness for access to the appropriate level of information classified in accordance with Executive Order 11652, provided, however, the Director of Central Intelligence shall prescribe standards for access to Sensitive Compartmented Information, intelligence sources and methods and intelligence information.

Section 5. Suitability Standards.

The appointment or retention of each civilian officer or employee in any department or agency is contingent upon his meeting one or both of the following suitability standards according to the nature of the position for which he is being considered or in which he is serving:

(a) The overall standard for Government employment is whether an individual's appointment or retention in any position will promote the efficiency of the service and whether, in any position requiring access to classified information, such appointment or retention is clearly consistent with the national interest.

(b) The standard for appointment or retention in Positions of Special Trust is whether the individual's demonstrated integrity, ^{loyalty,} trustworthiness and discretion are such that his appointment or retention in such a position would be clearly consistent with the national interest.

Section 6. Positions of Special Trust.

(a) General - Certain positions within the Federal service entail duties of such a sensitive nature that the misconduct, malfeasance or nonfeasance of an incumbent in any such position could result in an unacceptably adverse impact upon the national interest. These positions,

which shall be determined by the Director of Central Intelligence, shall be subject to the standards of

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exercised in the selection of individuals to fill such positions. There
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are two categories of Positions of Special Trust:

(1) National Security: Those activities ^{related to the military security, foreign} ~~involving access to~~ affairs, or foreign intelligence program of the United States, or activities involving ~~classified information or which are directly related to military security,~~ access to classified information related to these activities, and including ~~foreign affairs or intelligence including~~ the protection of the government ^{foreign aggression,} against espionage, sabotage, subversion, assassination and terrorism and any other illegal acts that adversely affect the national defense, ~~such as those activities which are directly concerned with the protection of the Nation from internal subversion or foreign aggression.~~

(2) National Welfare: Those activities which are directly related to domestic order and the economic and productive strength of the Nation, including critical policy making and law enforcement positions, access to sensitive information critical to the Nation's economic or domestic interest, and access to property or installations that affect public health, safety or economic well being.

(b) Criteria For Designating Positions of Special Trust - Only those civilian positions in the Federal service which meet any of the following criteria shall be designated a Position of Special Trust:

(1) National Security Positions which:

- (i) Require access to Top Secret information;
- (ii) Require access to Sensitive Compartmented Information;
- (iii) Require access to classified information revealing intelligence sources, methods and analytical procedures;
- (iv) Require access to any classified information which is controlled by special access procedures established by the head of a department or agency;
- (v) Involve personnel investigative duties;

functions of an agency critical to national security
interests; or which

- (vii) Allow the incumbent to make or influence suitability determinations concerning persons having the access or performing any of the duties listed in (i) through (vi) above.

Positions requiring access to information classified no higher than Secret or Confidential, other than those referred to in subsections (b)(1)(ii) through (vii) above or (2) below, shall not be designated as Positions of Special Trust solely on that basis in that the standard and criteria for employment in such positions are as prescribed in subsections 5(a) and 8(b)(1). ~~however, only United States citizens shall be employed in positions requiring access to information classified in accordance with Executive Order 11652.~~

(2) National Welfare Positions which:

- (i) Require access to material or information, the dissemination of which is highly restricted because of its importance to the economic well-being of the Nation;
- (ii) Entail responsibility for formulation or implementation of major plans and policies including enforcement of laws such that malfeasance or nonfeasance whether willful or inadvertant results in significant damage to the national interest that cannot be effectively prevented or corrected;

- (iii) Entail final authority for the recommending or approving

Other use of property or funds of high individual or aggregate value, such that it impacts on national economic policy;

- (iv) Entail responsibility for making selections, appointments or adverse determinations concerning persons having the access or performing any of the duties listed in (i) through (iii) above.

(c) Designation of Positions of Special Trust -

(1) Authority to Designate: The designation of Positions of Special Trust shall be made ~~only~~ by the heads of departments, agencies of the Intelligence Community as defined or major organizational components ~~established by statute or Executive Order in Executive Order 11905, or by their delegates.~~
~~Order in accordance with the above criteria.~~

(2) Certification and Redesignation: The heads of organizations referred to in (1) of this subsection ~~with respect to Positions of Special Trust~~
~~or their delegates~~

(i) ~~shall certify in the records of the organization concerned the validity of the position designation at the time of designating each separate position; and~~

(ii) ~~shall maintain or cause to be maintained a central record of such positions and annually certify the validity of designation of such positions to the Civil Service Commission and~~

~~(iii)~~ shall approve any change in designation.

Section 7. Suitability Investigations.

(a) General - The appointment of each civilian officer or employee in any department or agency shall be made subject to an investigation

conducted for the purpose of developing information relevant to determining whether such appointment is in conformance with the applicable standard specified in section 5 of this Order. 11

(b) Limits On Investigative Matters - Investigations shall be designed in so far as is possible to collect only as much information as is relevant and necessary for a proper suitability determination, to develop information that is timely and that avoids unnecessary inquiry into sensitive or private areas of personal behavior, and to report for use in final suitability determinations only information that is ~~adequate~~ reasonably feasible or warranted, ~~and~~ as fully corroborated as ~~possible~~. Inquiries which have no relevance to a suitability determination should not be made. Questions regarding personal and domestic affairs, national origin, financial matters, and the status of physical health, fall in this category unless the question is relevant to the disqualification criteria of section 8 of this Order. The probing of a person's thoughts or beliefs and questions about his conduct, which have no suitability implications, are unwarranted. Further, religious beliefs and affiliations or beliefs and opinions regarding racial matters, political beliefs and affiliations of a nonsubversive nature, opinions regarding the constitutionality of legislative policies, and affiliation with labor unions or fraternal organizations are not proper subjects for such inquiries, except where this information constitutes a bonafide qualification or fitness requirement for a specific relates to employment, ~~unlawful or unconstitutional activities~~, or relates to the suitability disqualification factors of Section 8.

(c) Investigations Concerning General Standard Positions

- Investigations conducted for the purpose of determining the suitability of an individual for Federal Service in a General Standard Position shall be based exclusively on the suitability standard set

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forth in section 5(a), shall be limited to matters relevant to reaching
a determination under that standard, and shall ascertain that no adverse
information exists which would preclude a favorable determination under
that standard; further, such investigation shall consist of a national
agency check, including a check of fingerprint files of the Federal
Bureau of Investigation and, where appropriate, written inquiries to
local law enforcement agencies, former employers and supervisors and
references. However, upon the request of the head of the department or
agency concerned, the Civil Service Commission may, in its discretion,
authorize such less investigation as may meet the requirements of the
national security or welfare with respect to per diem, intermittent,
temporary or seasonal employees, or aliens employed outside the United
States.

(d) Investigations Concerning Positions of Special Trust -

(1) Investigations conducted for the purpose of determining the
suitability of an individual for Federal Service in a Position of Special Trust,
herein after referred to as a Full Field Investigation, shall be based
exclusively on the suitability standards set forth in sections 5(a) and
(b) of this Order, shall be limited to matters relevant to reaching a
determination under those standards, shall develop information positively
affirming that the individual's identity, , loyalty /conduct/ and character are such as meet
the standards set forth in sections 5(a) and (b), and shall be completed
prior to appointment; provided that when appointment is made prior to
completion of the investigation the procedures prescribed in (2) of this
subsection are followed.

Full field investigations for all Positions of Special Trust throughout

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the Executive Branch shall be personally conducted investigations with

~~particular emphasis on the most recent five year period~~ These investigations
investigative standards set forth
shall be uniform and shall include, as a minimum, the ~~elements listed~~

below, unless special coverage has been requested by the head of the
department or agency, and approved by the Civil Service Commission.

Nothing in this Order shall be taken to limit the investigation if
significant adverse information is developed ~~outside of the most recent~~
~~five year period~~

- (i) Verification of date and place of birth and citizenship.
- (ii) Check of the subversive and criminal files of the Federal Bureau of Investigation, including submission of fingerprint charts, and such other National agencies as are appropriate to the individual's background. An additional check of Immigration and Naturalization Service records shall be conducted on those members of the individual's immediate family who are United States citizens other than by birth or who are resident aliens.
- (iii) A check of appropriate police records covering all areas where the individual has resided in the US throughout the most recent fifteen (15) years or since age eighteen, whichever is the shorter period.
- (iv) Verification of the individual's financial status and credit habits through checks of appropriate credit institutions and interviews with knowledgeable sources covering the most recent five (5) years.

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- (v) Interviews with neighbors in the vicinity of the individual's residences in excess of six (6) months throughout the most recent five (5) year period. This coverage shall be expanded where the investigation suggests the existence of some questionable behavioral pattern.
- (vi) Confirmation of all employment during the past fifteen (15) years or since age eighteen, whichever is the shorter period but in any event the most recent two years. Personal interviews with supervisors and co-workers at places of employment covering the past ten (10) years shall be accomplished.
- (vii) Verification of attendance at institutes of higher learning in all instances and at the last secondary school attended within the past fifteen (15) years. Attendance at secondary schools may be verified through qualified collateral sources. If attendance at educational institutions occurred within the most recent five(5) years, personal interviews with faculty members or other persons who were acquainted with the individual during his attendance shall be accomplished.
- (viii) Review of appropriate military records.
- (ix) Interviews with a sufficient number of knowledgeable acquaintances (a minimum of three developed during the course of the investigation) as necessary to provide a continuity to the extent practicable, of the individual's activities and behavioral patterns over the past fifteen years with particular emphasis on the most recent five years.*

*(i) through (ix) above are taken from Director of Central Intelligence Directive No. 1/14 (updated 13 May 1976), paragraph 11, "Minimum standards ... for ... investigation"

An investigation, completed with favorable results, conducted in conformance with the foregoing scope, shall be accepted as meeting the investigative requirement for any Position of Special Trust, even though a more extensive investigative scope has been authorized for such position by the Civil Service Commission, if the individual concerned subsequent to the completion of the investigation has been continuously employed in any Position of Special Trust for 5 years or more - subject to the provisions of subsection (j) below.

(2) In case of an emergency, a Position of Special Trust may be filled for a limited period by a person with respect to whom the required personal investigation has not been completed if the head of the department or agency ~~personally~~ determines that the waiver of such completion is necessary in the interest of national security or welfare based on the following criteria:

- (i) the position cannot remain unfilled without unacceptably adverse impact upon the mission of the organization.
- (ii) the applicant/nominee has such unique talent that no other person can fill the position.
- (iii) the priority of the program (assigned personally by head of agency or department) is so high that awaiting completion of investigation ^{may} ~~will~~ result in program failure.

Such determination shall be made a part of the records of such department or agency. If such position is filled on this basis, the investigation must be requested not later than 3 days from entrance of the employee concerned on active duty and must be completed within 90 days from the date of waiver.

(3) Notwithstanding the limitations specified in subsection (1) above, investigations of applicants for positions of Special Trust may also include verification of special qualifications for the position involved as may be determined by the head of the department or agency.

(e) Investigative Expansion or Referral -

(1) Expansion: Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the applicable standard set forth in section 5 the investigation shall be expanded to the extent necessary to enable the Civil Service Commission or head of the department or agency concerned to determine whether the individual is suitable for employment or retention in employment. Further, when significant adverse or questionable information is developed during the course of an investigation, the subject of the investigation, ~~insofar as national security interests permit~~ except as limited or precluded by national security concerns shall be afforded an opportunity to affirm, refute or or by statute, otherwise explain such information, prior to closing the investigation.

(2) Referral: There shall be referred promptly to the Federal Bureau of Investigation all investigations which develop information that an individual's conduct or activities are such as may fall within the investigative jurisdiction of the FBI.

(f) Investigative Procedures -

(1) Sources of Investigative Information: Persons conducting investigations authorized under this section shall collect information to the greatest extent practicable directly from the subject individual, but are authorized to seek additional information from any other appropriate source, including but not limited to:

- (i) the parent(s) or guardian(s) of the person being investigated;

~~(ii) Birth and citizenship records,~~
(iii) ~~(AAA)~~/ school records;
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(iv) ~~(AAA)~~/ federal, state, and local official government

records, including conviction and sentencing information, court proceedings and probation records regarding criminal offenders;

(v) ~~(AAA)~~/ employment records;

(vi) ~~(AAA)~~/ medical records relevant to a determination under section 8(b)(2) (iii); and

(vii) ~~(AAA)~~/ personal acquaintances.

The criminal offender information which the department or agency head concerned or his designee is authorized to obtain under this section includes, but is not limited to, all criminal history relating to arrests, indictments, information, or other formal criminal charges, dispositions, or a reason why no disposition is available, sentencing, and correctional supervision and release.

Where consistent with other Executive Orders and the mission of an agency or department,
(2) Notice to the Individual: Prior to initiation of any ment, p

investigation, the subject of the investigation shall be given ~~written~~ notice of:

- (i) The authority under which the investigation will be conducted;
- (ii) The scope of the investigation including an enumeration of the types of records and files to be checked and the type of individuals to be contacted;
- (iii) The principal purpose or purposes of the investigation;
- (iv) The individuals or organizations that will have access to the information;

including access rights and rebuttal and appeal/

(will) // A description of the protection that the infor-

(v) ~~(vii)~~ The effects on the individual, if any, of not

(3) Information to be Released by the Individual - The individual

(4) Investigative Limitations With Respect to Privacy - In

- (i) Not investigate any case or person except those

- (ii) Not interview witnesses where the testimony is

Inform witnesses of the eligibility of their identity

- (111) ~~Always present credentials and inform witnesses of~~
for confidential treatment;

be made of the witnesses testimony; the eligibility

effects/ bʌ/ hʌm/, / 1E/ ʌnʃ/, / bE/ hɒt/ pɪbʌl1ʌ1hɜ/ ʌ11/ bɪ/ ʌnʃ

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- (iv) Not furnish information, other than necessary identity data, or ask questions in such a manner as to indicate that the investigator is in possession of derogatory information concerning the subject of the investigation;
- (v) Refrain from using, ~~under any circumstances, covert or surreptitious investigative methods, devices or techniques including mail covers, physical or photographic surveillance, voice analyzers, interception of teletype, radio intercepts, wiretaps or eavesdropping devices,~~ except as permitted by law or Executive Order;
- (vi) Not investigate any case in which the investigator knows of circumstances which might adversely affect his fairness, impartiality or objectivity.
- (vii) Refrain, under any circumstances, from conducting physical searches of the subject or his property or making uninvited visits to the subject's home.
- (viii) Refrain from using a polygraph in any investigation conducted under this Order except in the case of ~~that any~~ organizations in the Intelligence Community as executive agency which has a highly sensitive defined in Executive Order 11905, intelligence or counterintelligence mission directly affecting the national security may use the polygraph for employment and screening personnel investigations subject to the provisions of Appendix D of Chapter 730 of the Federal Personnel Manual. All other uses of a polygraph to screen applicants for or appointees to competitive positions are forbidden regardless of whether the polygraph examination is administered by the agency concerned or was provided by that agency

(h) Investigative Support to Non-Executive Branch Federal Agencies - Legislative, judicial and quasi-governmental agencies, including the Government of the District of Columbia, that require investigations similar to those prescribed in this order may use the investigative facilities of the Civil Service Commission.

(1) Use of Prior Investigations - In order to avoid unnecessary duplication of effort and expense, an agency making a suitability determination pursuant to this Order shall make the fullest use of reports of prior investigation, to the extent that such prior investigation was based on the standards, suitability factors and investigative coverage requirements of this Order. If the prior investigation did not comply with this Order, such additional investigation as may be necessary shall be conducted.

(j) Reinvestigation.

(1) Incumbents. Once a person's suitability for Federal Service has been determined under the provisions of this order, he shall not be

which raises reasonable doubt as to whether he continues to meet the
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applicable standard prescribed by section 5. However, the head of a

department or agency authorized to establish Positions of Special Trust

may, with respect to such positions designate those which shall require

re-investigation of the incumbent 5 years after employment, and once each

Such reinvestigation shall include as a minimum appropriate
succeeding 5 years, ~~provided that such reinvestigation, in the absence of~~

~~national agency checks, local agency checks (including overseas checks where~~

~~potentially available suitable information, includes as a maximum~~

~~appropriate), credit checks and a personal discussion with the individual~~

~~(1) requiring the incumbent to submit an updated statement of personal~~

~~by trained investigative security or counterintelligence personnel when necessary~~

~~history to the appropriate office responsible for requesting such investigation~~

~~to resolve significant adverse information or inconsistencies.~~

~~gations, and (2) a review of the statement of personal history together~~

~~with the personnel file of the incumbent, locally available records, reports~~

~~of investigation conducted in, and, and by other locally available reports~~

~~of the individual, and the individual's file, and the individual's file, and~~

~~of the individual, and the individual's file, and the individual's file, and~~

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~~of the individual, and the individual's file, and the individual's file, and~~

~~of the individual, and the individual's file, and the individual's file, and~~

(2) Former Employees. A former employee, who re-applies for employ-

ment, shall be investigated whenever available information raises a

question as to whether the individual continues to meet the standard

provided by section 5 or there has been a break in his employment by the

Federal government greater than 12 months.

Section 8. Adjudication.

(a) Objectives - The objectives of the adjudication procedure shall

be to determine whether, on the basis of available information, the

individual's employment reasonably can be expected to promote the efficiency

of the service and, in the case of a Positions of Special Trust and those

requiring access to information classified in accordance with Executive Order

11652, to be clearly consistent with the national interests. The adjudica-

tion procedure is an effort to assess the probability of future conduct, whether

willing or unwilling, deliberate or through negligence, which would impair

the efficiency of the service or expose the national interests to hazard or jeopardy. Approved For Release 2004/10/27 : CIA-RDP78M02660R000800020002-7 possibility of prejudicial behavior against the consequences of failure in terms of the interests of the agency's mission or of the national welfare or security. Where the nature of the position is such that the consequences of failure are of little national import or are easily reparable, some doubts about an individual's suitability may be resolved in his or her favor. Where the consequences of failure pose a greater hazard to the national interests, however, such as with Positions of Special Trust, a smaller degree of doubt may warrant disqualification.

(b) Reasons for Disqualification -

(1) General: All applicants for or incumbents of positions in the Executive Branch must meet the standard of efficiency cited in Section 5(a). Specifically, an individual shall be disqualified for such employment if his or her conduct may reasonably be expected to interfere with or prevent his or her effective performance in the position sought or held, or if such conduct may reasonably be expected to interfere with or prevent effective performance by the employing agency of its duties and responsibilities. Any of the following factors may be considered a basis for disqualification:

- (i) Delinquency or misconduct in prior employment;
,deviate,
- (ii) Criminal, dishonest, infamous or notoriously disgraceful conduct;
- (iii) Intentional false statement or deception or fraud in examination or appointment;
- (iv) Habitual use of intoxicating beverages to excess;
- (v) Abuse of narcotics, drugs, or other controlled substances;

(vi) Reasonable doubt as to the loyalty of the person
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involved to the Government of the United States;

(vii) Any statutory disqualification which makes the individual unfit for the service. These suitability factors have been promulgated by the Civil Service Commission which is authorized to make changes in these factors after consideration of the comments of the public and in coordination with the departments and agencies.

(2) Positions of Special Trust and General Standard Positions

Requiring Access to Classified Information: An individual shall not be appointed to or retained in a Position of Special Trust unless such appointment or retention meets the standard cited in section 5(b). In addition to the factors specified in section 8(b)(1) above, the following factors shall be considered in determining whether the individual's employment meets the stricter standard for a Position of Special Trust and those General Standard Positions requiring access to information classified in accordance with Executive Order 11652.

(i) Any facts, circumstances, relationships, or conduct which furnish reason to believe that the person concerned may be subjected to coercion, influence, or pressure which or induce could cause/him to act contrary to the national interest;

(ii) Any facts, circumstances or conduct which indicates poor judgment, unreliability or untrustworthiness suggesting that the person concerned might fail to safeguard sensitive information, deliberately or inadvertently;

(iii) Any illness, including any mental condition, of a

nature which in the opinion of competent medical

with due regard to the transient or continuing effect of the illness and the medical findings in such case;

- (iv) Wanton or reckless disregard of public law, statutes, Executive Orders or willful disregard of security regulations;
- (v) Refusal or intentional failure to complete required personal history statements or security forms, or otherwise failing or refusing, in the course of an investigation, interrogation, or hearing, to answer, or to authorize others to answer, any pertinent questions regarding the matters set forth in subsection 8(b)(1) and (2) of this section; or
- (vi) A background which cannot/ reasonably be verified sufficiently to permit a positive demonstration of trustworthiness.

(c) Considerations in Weighing Evidence -

(1) General Guidelines:

While equity requires a degree of uniformity in the adjudication of individual cases, assuring fair and consistent evaluation of circumstances from one situation to the next, each case must be assessed on its own merits, taking into consideration all relevant facts, prior experience of similar cases, the nature of the position involved, including its level of responsibility and sensitivity, and the acceptability of risk. All information of record, both favorable and unfavorable, must be considered, and assessed in terms of completeness, relevance, seriousness,

relationship between the facts of the case and the standards
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cited in Section 5.

(2) Factors to be Considered:

Although there are certain circumstances which, in themselves, are obviously disqualifying, such as the use of a false identity or the various statutory restrictions on employment, adjudication of most forms of conduct must include consideration of all pertinent mitigating or aggravating factors, including the following:

- (i) the nature of the position involved, including the level of responsibility and sensitivity;
- (ii) the nature and seriousness of the conduct;
- (iii) the circumstances surrounding the conduct;
- (iv) the frequency and recency of the conduct;
- (v) the age of the individual, if the activity was as an adolescent;
demonstrably contributing
- (vi) ~~contributing~~ social or environmental conditions;
- (vii) the voluntariness of the individual's participation;
- (viii) the absence or presence of rehabilitation ~~effort~~ effort toward rehabilitation.

(3) Additional Factors to be Considered with regard to Position of Special Trust:

- (i) Refusal by an applicant for or an incumbent of a Position of Special Trust to furnish or to authorize others to furnish information deemed necessary and

relevant to a determination of his or her suitability

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for the particular position may warrant an inference that the individual's employment cannot be found to be clearly consistent with the national interests.

- (ii) An individual employee who recognizes that he or she has become involved in an incident or situation, whether by virtue of some misconduct or indiscretion on his or her part which could adversely affect the national interests, and who promptly reports the matter to appropriate authority, shall receive a sympathetic response. To the extent consistent with applicable law or regulation and other criteria of this order, the individual's voluntariness and candor in providing such information shall be considered if as possible ~~as a mitigating circumstance and, as appropriate, evidence~~ of a willingness to rehabilitate.

(4) Factors not to be Considered:

- (i) Criminal history information which does not show final disposition of a charge must be investigated further to ascertain the disposition and reasons therefor. No adverse determination shall be made except on the basis of information which is as complete as circumstances allow.
- (ii) No adverse determination shall be made on the basis of how an individual has exercised his First Amendment rights, which include but are not limited to, religious and political beliefs, freedom of speech and of the press, and freedom of assembly and petition. Such factors are

(d) Timely Adjudication - Adjudication should be completed in a timely fashion and in no event more than 90 days after the receipt of the final investigative report.

Where the national interest and the lawful missions of agencies and departments permit, it

(e) Notice to the Individual - The individual shall be informed of the completion of any investigation conducted pursuant to this Order and shall be informed of the final suitability determination.

Section 9. Due Process and Adverse Determination Procedures.

(a) Due Process Policy - No person may be denied eligibility for appointment or appointment in the Federal service or finally removed from a position in the Federal service by the Civil Service Commission or a department or agency for failure to meet the standards prescribed by Section 5 of this Order unless he has been afforded such due process

as is provided for in this section, or as provided in Section 10 of this Order or unless his employment is terminated under provision of Section 102(c) of the National Security

(b) Applicants Act of 1947, as amended (50 U.S.C.A. 403).

Any

(1) No person may be denied eligibility for appointment or appointment in the Federal service, competitive or excepted service, by the Civil Service Commission or by the head of a department or agency for failure to meet the standards prescribed by section 5, unless the person has been given:

notification

(i) a written statement of the reasons upon which such denial is to be based in sufficient detail to afford an opportunity to respond and offer comments or

(ii) a reasonable opportunity to make such response;

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which, if adverse, shall cite the specific reasons upon which the determination is based; and

(iv) ~~A written~~ notification of the right to appeal the in competitive service cases adverse determination to the Federal Employee Appeal Authority /, and in excepted service cases to the head of the agency or department involved.

(c) Incumbents

involuntarily

No person may be ~~finally~~ removed from employment, competitive or excepted service, by the Civil Service Commission or by the head of a department or agency for failure to meet the standards prescribed by section 5 unless appropriate Civil Service removal procedures have been followed for those persons in the competitive service or the established agency ~~and appropriate Civil Service Commission~~ removal procedures have been followed for those persons in the excepted service, except that when the head of the agency determines that the protection of national security interests so require the provision of section 10 shall be applied.

Section 10. Procedures Concerning Positions Which Involve National Security Interests. In furtherance of the objectives of the Act of August 26, 1950 (5 U.S.C. 7531, et seq.), whenever the continued employment of an individual in the Federal service, or his access to classified information, is found to be not consistent with national security interests, the head of the agency shall take appropriate action in accordance with the following procedures.

(a) Suspension from employment or access to classified information.

The head of a department or agency shall, when deemed necessary to the national security, suspend from employment any civilian officer or employee, competitive or excepted service, or shall suspend the individual's access to classified information, provided that, to the extent that such agency head

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determines the national security permits, the employee shall be notified of the reasons for the suspension and within 30 days after such notification any such person shall have an opportunity to submit any comments or other evidence relative to the issues. However, within 120 days, if the determination is adverse, the head of the agency shall take further action under one of the following procedures.

(b) Removal from employment or revocation of security clearance.

If ~~the~~ a department or agency, based on the circumstances of the involuntarily case, determines action should be initiated to ~~finally~~ remove/an individual from employment or to revoke the individual's clearance for access to the agency or department classified information, ~~he~~ shall afford the individual the following: notification

(i) ~~A written statement~~ of the reasons upon which such removal or revocation of clearance for access to classified information is to be based in such detail as national security permits and as would afford him an opportunity to respond and offer comments or other evidence relative to the issues;

(ii) a reasonable opportunity to make such response;

(iii) after he has made a response, the form or sufficiency in the case of the competitive service of which may be prescribed/by regulations issued by the Civil Service in the case of the excepted service by regulations issued by Commission or/the head of the department or agency concerned, an opportunity to in the case of the competitive service in the case of the excepted service appear personally/before the Commission or/the head of the before department or agency concerned or appropriate designee for the purpose of supporting his suitability for retention in the position concerned, or eligibility for clearance for access to classified information and to present evidence in his behalf;

(iv) a reasonable time to prepare for that appearance;

(v) an opportunity to be represented by counsel;

(b)(1) // an opportunity to cross-examine persons involved

orally. Approved For Release 2004/10/27 : CIA-RDP78M02660R000800020002-7

suitability for retention in the position concerned or eligibility for clearance;

(vi) (b)(1) a review of his case by the agency head or his designee, before a determination adverse to the employee is made final; and

(vii) (b)(1) a written notice of the final decision in his case which, if adverse, shall specify whether the Commission or the head of the department or agency found for or against him with respect to each allegation in the statement of reasons.

The employee concerned shall be advised of the grounds for the decision and be given an opportunity to be heard in person or by counsel, to present evidence and to cross-examine witnesses. The employee shall be given a written statement of the reasons for the decision and be given an opportunity to be heard in person or by counsel, to present evidence and to cross-examine witnesses.

(b)(2) // the head of the department or agency shall be given an opportunity to be heard in person or by counsel, to present evidence and to cross-examine witnesses. The head of the department or agency shall be given a written statement of the reasons for the decision and be given an opportunity to be heard in person or by counsel, to present evidence and to cross-examine witnesses.

(b)(3) // the head of the department or agency shall be given an opportunity to be heard in person or by counsel, to present evidence and to cross-examine witnesses. The head of the department or agency shall be given a written statement of the reasons for the decision and be given an opportunity to be heard in person or by counsel, to present evidence and to cross-examine witnesses.

view of the nature of the position involved in the assignment of the person to the position of Special Trust (National Security) provided that the reassignment is (1) to a position of the same grade, (2) comparable duties and (3) within the commuting area of the position from which the person is reassigned or, as appropriate, within the area of the agency headquarters. In all such reassignment cases the reassignee shall be given:

the national security and that the person who furnished the information

shall be given the opportunity to be heard in person or by written statement

and to be heard in person or by written statement

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(c) Reassignment to a position which does not involve national security interests. Nothing in this order shall be deemed to limit or affect the responsibility and authority of any head of a department or agency when, in his absolute discretion, he deems it necessary in the interest of national security to reassign a person to a General Standard Position from a Position of Special Trust (National Security) provided that the reassignment is (1) to a position of the same grade, (2) comparable duties and (3) within the commuting area of the position from which the person is reassigned or, as appropriate, within the area of the agency headquarters. In all such reassignment cases the reassignee shall be given:

notification

(1) adverse information of the adverse information upon which the reassignment is to be based in such detail as national security permits and

in sufficient detail to afford an opportunity to respond and offer comments
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or other evidence relative to the issues;

(2) a reasonable opportunity to make such a response;

(3) a letter of notification of the decision, if reassignment is decided, which shall cite the specific reasons, to the extent national security permits, upon which the decision is based.

(d) Reserved Authority Nothing in this order shall be deemed to limit or affect the responsibility and powers of the head of a department or agency to deny or revoke access to a specific category of information or otherwise identified for compartmented access purposes classified in accordance with Executive Order 11652/1f the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of a department or agency determines that the procedures prescribed in section 9 or subsections (a)(b) or (c) of this section cannot be invoked consistently with the national security and such determination shall be conclusive.

Section 11. Reinstatement, Restoration to Duty and Re-employment.

Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies in accordance with section 10 of this order shall not be reinstated or restored to duty or re-employed in the same department or agency and shall not be re-employed in any other agency or department, unless the head of the department or agency concerned finds that such reinstatement, restoration or re-employment is consistent with the standards of section 5a and b; such findings shall be made a part of the records of such department or agency. However, no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Commission that such person is eligible for such employment.

Section 12. Review of Adverse or Questionable Information Arising

Subsequent to Favorable Suitability Determination. Approved For Release 2004/10/27 : CIA-RDP78M02660R000800020002-7

Whenever there is developed or received by any department or agency information indicating that the retention of any civilian officer or employee in the Federal Service may not be consistent with the standards set forth in sections 5(a) and (b), such information shall be forwarded to the head of the department or agency concerned or his designee who, after such investigation as may be appropriate, shall review or cause to be reviewed the adverse or questionable information. If after such review, it is the determination of the head of the department or agency that the retention of the person concerned may not be consistent with the appropriate standard(s) set forth in section 5(a) or (b), he shall initiate action under the provisions of section 9 or 10, as appropriate.

Section 13. Program Management.

a. General Policy Oversight - Within the Executive Office of the President, the National Security Council and the Office of Management and Budget shall exercise oversight of the Civil Service Commission operation of the Federal Personnel Suitability Investigation and Adjudication Program and shall be responsible for providing policy guidance concerning that program and shall effect the necessary oversight needed to assure that implementation of the policies set forth herein by the departments and agencies is consistent with the interests of the nation and the constitutional and civil rights of the individuals concerned. A program directive shall be issued by the Civil Service Commission within 90 days of the effective date of this order.

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b. Responsibilities of the Departments and Agencies -

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(1) Department and Agency Systems In furtherance of the

Federal Civilian Personnel Suitability Investigation and Adjudication Program the head of each department and agency established by statute or Executive Order shall be responsible for maintaining a centrally managed personnel suitability, adjudication and review system to insure that the employment and retention of each civilian officer or employee, in the competitive or excepted service, is consistent with the suitability standards of this order.

(2) Implementing Regulations: The heads of the departments and agencies shall, within 90 days of the effective date of the directive cited in subsection (a) of this section, issue appropriate regulations implementing the policies and procedures of this Order.

(c) Standardized Qualifications and Training of Program Personnel: The Civil Service Commission, in coordination with other appropriate agencies, shall prescribe minimum standards for the selection and training of Federal personnel investigators, adjudicators and supervisory personnel in these activities.

(d) Index of Investigations:

- (i) In order to avoid unnecessary and duplicative investigation/ and to the extent permitted by national security interests or statute, there shall be established and maintained in the Civil Service Commission an index covering all persons as to whom personnel suitability investigations have been conducted under this order by the Commission or any department or agency of the Executive Branch. The index shall contain the name of each person investigated,

adequate identifying data concerning such person,
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identification of the department or agency which has

conducted an investigation concerning the person considered,
or has suspended or terminated the employment of such
person under the authority granted to the heads of departments
and agencies by or in accordance with this
order or said Act of August 26, 1950.

(ii) The heads of all departments and agencies shall furnish
to the Civil Service Commission information as prescribed
by the Commission appropriate for the maintenance of
this index.

(iii) Each department or agency shall maintain a record of the
action taken as a result of any investigation conducted by
or at the request of such department or agency in accordance
with this Order.

(e) Control, Release and Use of Investigative Reports:

(i) Control of Reports - Reports of investigation developed
for the purpose of this order shall, upon rendering of
the final determination, be filed at a place designated
by the Commission or the head of the department or
agency which conducted the investigation, as the case
may be, under conditions which will protect the privacy
of the persons concerned and the interests of the nation.
The reports and other investigative material and information
developed by investigation conducted under this order
shall remain the property of the agency which conducted
the investigation.

(ii) Release of Reports - Access to and release of such
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reports will be afforded under procedures prescribed by
the investigative agency concerned in accordance with
Executive Order 11652, the Freedom of Information
Act, the Privacy Act of 1974² and other applicable laws,
rules and regulations, and national security interests.

(iii) Use of Reports - Except as otherwise authorized by
law or Executive Order such reports shall be used only
to (1) determine an individual's suitability for Federal
Service as provided for in this Order or (2) eligibility
for access to classified information; except that such
reports may be used to compile management and statistical
information necessary for the effective management of the
Federal Civilian Personnel Suitability Investigation and
Adjudication Program. Such reports or information from
them shall not be used for the purpose of determining an
individual's eligibility for promotion, selection for
training or assignment for assignments nor for any other
positions of Special Trust.

(iv) Disposal of Investigative Reports - Investigative reports
prepared as provided by this Order shall be destroyed
fifteen years after the last investigative activity unless
they contain significant adverse information in which case
they shall be retained twenty-five years after the last
investigative activity.

only such information as is necessarily relevant and
timely to accomplish the objectives of this order and
sufficiently corroborated to assure accuracy of reports
concerning documents will be audited each time they are used,
to insure that the material contained in the reports is
necessarily accurate, relevant, timely and complete. In conformity
with the Federal Records Act and other statutes and
orders governing record retention, agencies will adopt
and publish purge schedules for all records compiled
under this order to promote the retention of necessary
relevant and timely information.

(f) Standard Forms: In order to avoid unnecessary proliferation of forms, the Civil Service Commission, in coordination with other appropriate agencies, shall develop and prescribe standard forms which shall be used uniformly by all departments and agencies in implementing the Federal Civilian Personnel Suitability Investigation and Adjudication Program to include personal history statements, privacy statements, release authorizations, investigative requests, investigative reports, testimony vouchers, adjudicative work sheets, suitability determination memoranda, suitability determination records, and notification statements to the subjects of investigations. However, supplemental forms required by the needs and missions of any agency or department may be used.

(g) Clearing House for Program Management Information:

The Civil Service Commission, operating under the guidance of the Executive Office of the President shall, establish a clearing house for information vital to effective program management such as legislative initiatives

and hearings, court and administrative hearing decisions and similar
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matters.

(h) Program Review: In order to assure full and continuing compliance with the provisions of this order, the Civil Service Commission, with the cooperation of the agencies and departments, shall effect continuing review of the manner in which the order is being implemented throughout the Federal Government and shall submit to the Executive Office of the President for review by the National Security Council and the Office of Management and Budget an annual report with recommendations to correct any deficiencies in the program which are inconsistent with the national interests or rights of the individual under the Constitution, the laws of the United States, or this Order. In addition, the Civil Service Commission shall develop and prescribe statistical reporting procedures designed to facilitate analysis of the effectiveness of the investigative and adjudicative processes of this Order.

(i) Annual Certification: In addition to the annual certification required by section 6(c)(2)(ii) of this Order, each department and agency shall make an annual report to the Civil Service Commission of the waivers granted under section 7(d)(2) of this Order and such information shall be included in the report cited in (h) above.

FROM	Central Intelligence Agency	NO.	S 148831	
	Washington, D.C. 20505	DATE	27 Dec 76	
TO:	Honorable James T. Lynn, Director Office of Management and Budget 252 Old Executive Office Bldg. Washington, D.C. 20503	TYPE OF MATERIAL	<input checked="" type="checkbox"/>	ENVELOPE(S)
			<input type="checkbox"/>	PACKAGE(S)
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LOG DATA		DATE AND TIME OF PICK-UP	12/27/76 2:25	
		COURIER'S INITIALS	<i>PCR</i>	
		ORIGINATING OFFICE LOG	2	